IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MRS. JUSTICE K. HEMA

FRIDAY, THE 24TH NOVEMBER 2006 / 3RD AGRAHAYANA 1928

MACA. No. 258 of 2003

OPMV. 879/1999 of MOTOR ACCIDENT CLAIMS TRIBUNAL, OTTAPALAM

.....

APPELLANT/1ST RESPONDENT:

ABDULKHADER, S/O. KUNHIMOHAMMED,
NECHIKOTTIL HOUSE, POST CHERPULASSERI,
OTTAPPALAM TALUK, PALAKKAD DISTRICT.

BY ADV. SRI. D. ANIL KUMAR

RESPONDENT/2ND RESPONDENT

THE UNITED INDIA INSURANCE CO. LTD.,
BRANCH OFFICE, P.B. NO. 12,
HOSPITAL JUNCTION, MANNARKKAD,
PIN - 678 582.

BY ADV. SRI. MATHEWS JACOB

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 24/11/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

MACA. No. 258/2003

Order on I.A. No. 925 of 2003 in M.A.C.A No. 258 of 2003

Dismissed.

24.11.2006 **Sd/- K. HEMA, JUDGE.**

// TRUE COPY //

P.A. TO JUDGE.

smp

K. HEMA, J.

M.A.C.A. NO. 258 OF 2003

Dated this the 24th day of November, 2006.

J U D G M E N T

This appeal is filed by the owner-cum-driver of the motor cycle involved in an accident alleged in this case. An award was passed allowing the claimant to recover and realise Rs. 24,790/- with interest from the appellant and the insurer of the vehicle jointly and severally. The Tribunal held that there is violation of policy conditions. The Tribunal also found that the appellant had no valid license to ride the motor cycle on the date of the accident as he had only a learner's license renewed upto 10.09.1999. But, the accident was on 20.10.1999. Therefore, the Insurance Company was allowed to recover the amount from the appellant-insured.

2. As per the allegations in the claim petition, the claimant was a pillion rider of a motor cycle and when he reached at the place of occurrence, the motor cycle driven by the appellant came from the opposite side in a rash and negligent manner and hit on the bike on which the claimant was travelling. The claimant was thrown out to the road and he sustained injury. He claimed a compensation of Rs. 1 lakh from the appellant and the insurer of the vehicle owned and driven by the appellant.

3. The appellant contested the matter before the Tribunal. It was contended by him that the accident occurred due to negligence of the other vehicle on which the claimant was a pillion rider. The Tribunal, on an analysis of the evidence rejected the said contention. It was held that, the appellant

himself was rash and negligent in his driving, which resulted in the accident. The appellant also contended that he had a valid driving license at the time of accident. He had also produced the same, but it was not marked. The Tribunal therefore found that he had no valid driving license at the time of the accident and hence the Insurance Company was allowed to recover the compensation awarded from appellant.

4. Learned counsel appearing for appellant submitted that, appellant was having a valid learner's driving license as on the date of occurrence, which will be clear from the endorsement on the photocopy of the license which was produced before the Tribunal. Though learned Tribunal failed to mark the same on the side of the appellant, it arrived at a finding that the learner's license was renewed only on 10.09.1999, presumably, on the basis of endorsement in the licence.

5. Drawing my attention to the photocopy of the learner's license, which is produced in this appeal, it was pointed out that the license was valid from 13.09.1999, and it was renewed upto 12.03.2000, as seen from the endorsement. But, learned Tribunal even without marking the document, has wrongly entered a finding that learner's license was renewed only upto 10.09.1999 and that at the time of accident, there was no valid license, it is contended.

6. On going through the photocopy of the learner's driving license, it appears that the finding entered by the Tribunal is factually wrong. But, without the production of the original, it may not be proper on the part of this

Court to conclude whether the endorsement is correct or not, and whether the finding of the Tribunal is actually wrong. This is specially so, since the document was not marked or admitted in evidence. On the facts and circumstances of this case, therefore, I find that an opportunity has to be given to the appellant to adduce evidence and produce the document. Hence, the award passed against him has to be set aside and the matter requires reconsideration by the Tribunal.

In the result, the impugned award is set aside. Learned Tribunal is directed to take the case on file and dispose of the same in accordance with law, after giving an opportunity to both sides to adduce evidence on the relevant aspects. Parties shall appear before the Tribunal on 29.03.2007. (Since claimant is not made a party to these proceedings, as the challenge is only against the Insurance Company taking steps to recover the amount from the owner-appellant, Tribunal shall give notice to claimant/his counsel also).

This appeal is allowed.

K. HEMA, JUDGE

smp